



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT-043-FOR; Docket ID: OSM-2023-0008
S1D1S SS08011000 SX064A000 231S180110;
S2D2S SS08011000 SX064A000 23XS501520]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). During the 2023 legislative session, the Montana legislature passed Senate Bill 392 (SB 392), amending the Montana Strip and Underground Mine Reclamation Act (MSUMRA) as well as the Montana Code Annotated (MCA). Accordingly, Montana submitted this proposed amendment to OSMRE on its own initiative. Montana's proposal adds a provision for the equal application of court costs to the prevailing party in contested case proceedings by a court or administrative agency that issues a decision. The proposal also amends the MCA to reference the equal application of court costs in section 1. Finally, the proposal includes codification instructions, a severability clause, an effective date, and an applicability

statement. This document gives the times and locations that the Montana program and this proposed amendment to the program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., M.D.T, [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we may hold a public hearing or meeting on the amendment on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., M.D.T. on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. MT-043-FOR, by any of the following methods:

- *Mail/Hand Delivery:* OSMRE, Attn: Jeffrey Fleischman, P.O. Box 11018, 100 East B Street, Room 4100, Casper, Wyoming 82602
- *Fax:* (307) 261-6552
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM-2023-0008. If you would like to submit comments, go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

We cannot ensure that comments received after the close of the comment period (see "DATES") or sent to an address other than the ones listed above will be included in the docket for this rulemaking and considered.

Instructions: All submissions received must include the agency name and docket number

for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Montana program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE’s Casper Field Office or the full text of the program amendment is available for you to read at www.regulations.gov.

Attn: Jeffrey Fleischman, Field Office Director
Office of Surface Mining Reclamation and Enforcement
100 East B Street, Casper, Wyoming 82602
Telephone: (307) 261-6550
Email: jfleischman@osmre.gov

In addition, you may review a copy of the amendment during regular business hours at the following location:

Attn: Dan Walsh, Mining Bureau Chief
Coal and Opencut Mining Bureau
Department of Environmental Quality,
P.O. Box 200901
Helena, MT 59601-0901

Telephone: (406) 444-6791

Email: dwalsh@mt.gov

FOR FURTHER INFORMATION CONTACT:

Attn: Jeffrey Fleischman, Field Office Director

Office of Surface Mining Reclamation and Enforcement

100 East B Street, Casper, Wyoming 82602

Telephone: (307) 261-6550

Email: jfleischman@osmre.gov

SUPPLEMENTARY INFORMATION:

- I. Background on the Montana Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Montana Program

Subject to OSMRE's oversight, section 503(a) of SMCRA permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved, State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with SMCRA and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7).

On the basis of these criteria, the Secretary of the Interior approved the Montana program on October 24, 1980. You can find background information on the Montana

program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the October 24, 1980, **Federal Register** (45 FR 70445). You can also find later actions concerning the Montana program and program amendments at 30 CFR 926.25.

II. Description of the Proposed Amendment

By letter dated June 22, 2023 (Administrative Record No. MT-043-01), Montana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). We found Montana's proposed amendment to be administratively complete on June 27, 2023. Montana submitted this proposed amendment to us, of its own volition, following the passage of Montana Senate Bill 392 (SB 392) during the 2023 legislative session. SB 392 amends the MSUMRA as well as §82-4-251 and §82-4-252 of the MCA. SB 392 also adds four contingencies that apply to the proposed amendments.

Under section 1 of SB 392 Montana proposes to add a provision to MCA, section 1, for the equal application of court costs to the prevailing party in contested case proceedings by a court or administrative agency that issues a decision pursuant to §82-4-2. This proposed section allows that a court or administrative agency may award the prevailing party reasonable costs of litigation, including filing fees, attorney fees, and witness costs. Under this proposal a court or administrative agency may not consider the identity of the party when awarding costs. This includes the permittee, permit applicant, agency, public interest litigant, or other party to the action. The proposal applies equally to all parties in an action and places the burden of proof and persuasion for awarding court costs on the requesting party. SB 392 does not state where section 1 will be codified in the MCA. This will be done by the legislature later; however, section 1 will be an integral part of the MCA.

Next, the proposal amends §82-4-251(7) and §82-4-252(5) to reference the equal

application of court costs in section 1. §82-4-251(7), which discusses the awarding of court costs, strikes out the word “Whenever” and adds the language “Subject to the provisions of [section 1], whenever...”. §82-4-252(5), which also discusses the awarding of court costs, strikes out the language “...to any party whenever the court determines that the award is appropriate...” and adds “...pursuant to [section 1]...”.

Lastly, SB 392 adds four contingencies to section 1 and the proposed amendments to §82-4-251 and §82-4-252. The contingencies will not be codified into the MCA but apply to section 1 as proposed and the amended sections of the MCA. Section 4 of SB 392 contains codification instructions which state that [section 1] is intended to be codified as an integral part of §82-4-2 and the provisions of §82-4-2 apply to [section 1]. Section 5 is a severability clause and states that if a part of SB 392 found invalid, any part(s) found valid will remain in effect. Section 6 of SB 392 is an effective date, which states that the act is effective on passage and approval. Lastly, section 7 of SB 392 is an applicability clause, which states that SB 392 applies to court actions filed on or after the effective date of SB 392.

The full text of the program and/or plan amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final

regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., MDT. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience

and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program and/or AML plan amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an

opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR part 926

State regulatory program approval, State-federal cooperative agreement,
Required program amendments.

David A. Berry,
Regional Director, Unified Regions 5, 7-11.
[FR Doc. 2023-16849 Filed: 8/4/2023 8:45 am; Publication Date: 8/7/2023]